



Written Testimony of Lisa Ruby  
on behalf of the Michigan Poverty Law Program

House Oversight Committee

August 17, 2021

Chairman Johnson and members of the House Oversight Committee, thank you for the opportunity to speak today. My name is Lisa Ruby, and I am the public benefits attorney at the Michigan Poverty Law Program (MPLP). MPLP is the statewide support center for Legal Services programs in Michigan. As the public benefits attorney at MPLP, I provide research, training, and litigation support to Legal Services offices statewide and engage in legislative and administrative advocacy. In providing support to attorneys throughout the state, I regularly meet those working with applicants/recipients of unemployment insurance benefits, as well as food, medical and cash assistance. I am here to talk about my experience as it pertains to advocates assisting applicants and recipients of unemployment insurance benefits, and more specifically how clear communication with advocates, workers, and the general public would alleviate much of the added stress and effort during this time, and going forward.

**Background**

In 2011, when the Agency began implementing its new computer system, MiDAS, Legal Aid became aware of significant process issues being created. These issues came to be known as the False Fraud Scandal, where MiDAS charged tens of thousands of innocent claimants with fraud. And while there seemed to be issues with the

UIA, the scope of those who needed help was being met by the current advocates. However, with the surge of claims caused by the pandemic, this abruptly changed, and Legal Aid offices have been inundated with requests for help around unemployment insurance benefits. For perspective, in the past 17 months, the Agency has paid out approximately \$40 billion to 3 million Michiganders, the great majority of it in federal Pandemic Unemployment Assistance (PUA) benefits. Despite the challenges and problems, the Agency has distributed the federal benefit in a timely fashion.

As a reminder, the CARES Act (Act) provides PUA coverage to individuals: (1) who are not eligible for regular unemployment compensation and (2) who self-certify that they are able and available for work but unemployed due to a COVID-19 related reason. To meet eligibility requirements, claimants must self-certify that one of the reasons identified within the CARES Act applies to their employment situation. All applicants/claimants must self-certify by checking a box next to a qualifying reason and submit the form to the Agency. It is somewhat surprising that PUA eligibility is set forth in just two pages of the Act. As a result of this brevity, the U.S. Department of Labor (DOL) has issued 36 Program Letters (UIPLs) to provide guidance to states regarding eligibility for PUA and the other programs described in the Act. This has left states scrambling to keep up with guidelines that are being continually redefined.

To assist states with implementation and reveal potential vulnerabilities in state systems, the DOL Office of Inspector General conducts regular audits. In an audit published on October 21, 2020, a survey of states that Michigan participated in, revealed that the most common challenges facing states were:

- a lack of resources to address the high volume of claims,

- untimely and unclear guidance from ETA (Employment and Training Administration), and
- incompatible legacy systems as top challenges.<sup>1</sup>

In spite of these challenges, the Agency has done a remarkable job paying eligible claimants. And yet, it could have done better. When faced with the task of updating its systems to accommodate new eligibility criteria, the Agency had the opportunity to issue clear notices and communicate with workers to explain what was happening. It failed. In fact, it is not clear why the Agency took that action it did. As recently as last week, conflicting reasons were being given to advocates about why claimants were told that they had to retroactively recertify. Our offices, and likely yours, were flooded with calls from worried Michiganders who were trying to understand what was happening, and perhaps more importantly, what would happen next.

### **The 700,000 letters**

On June 28, 2021, the Agency sent a three-page, single-spaced letter (attached) to close to 700,000 claimants, with the heading “**Immediate Action Required**”. It instructed recipients to retroactively recertify for weeks of unemployment dating back, for some, to March, 2020. It told them that they had never been eligible for benefits because the reason for their eligibility no longer existed. But, if they went back and answered the new questions for *all* the prior weeks that they received benefits, they might be eligible, again. And if they did not take these onerous steps, their eligibility would be reassessed using the old questions, and of course they would be found not eligible. For

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<sup>1</sup> <https://www.oig.dol.gov/public/reports/oa/2021/19-21-001-03-315.pdf>,  
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some, this meant losing tens of thousands of dollars in benefits. The deadline for completing this task was 20 days from the date on the letter.

These notices sent recipients into a panic, shocked to be told that they had been overpaid thousands of dollars due to no fault of their own. Some 350,000 recipients did not complete the recertification process. Of these, we know that some received the June letter after the deadline to recertify, some were overwhelmed by the thought of re-answering the questions, and some were unable to complete the process despite their best efforts, due to problems with the online system.

After the deadline for recertifying had passed, a new round of notices was sent out. The notices stated that the recipient had been overpaid due to “Misrepresentation” under MCL 421.62(b) of the Michigan Employment Security Act. To be clear, this legalese is what is written in the notices.<sup>2</sup> The language is inaccurate, unnecessary, and caused harm. Ironically, all the overpayments were due to Agency error. The notice does go on to say that the overpayment will be waived, but this language does not erase the concern by recipients that they have been accused of lying. “Misrepresentation” can be defined as the action of giving a false or misleading account of something. As we know, there was no misrepresentation. Once again, the public’s distrust of the unemployment insurance system in Michigan is being questioned. This was avoidable.

### **Communication**

The CARES Act unemployment programs went into effect as soon as the law was passed, and suddenly, states were under pressure to pay claimants. It is not surprising that Michigan and other states reported that federal guidance was not timely or complete; in

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<sup>2</sup> Section 62(b) states that Misrepresentation is an act committed by the claimant; it is within the section of the statute that references fraud.

the five months after the passage of the CARES Act, 20 pieces of guidance were issued, and 15 webinars conducted.<sup>3</sup> This onslaught of federal guidance has continued, and though helpful, it has been a challenge for state agencies to keep up. Recognizing that no entity could have been prepared for the glut of unemployment applications that hit the Agency and the pressure to issue payments immediately, our attorneys approached the Agency with an offer of assistance. This course of action is routine in my line of work – when possible, we want to work collaboratively with state agencies. Personally, I have worked with the Michigan Department of Health and Human Services (MDHHS) since 1992. This is not to say that MDHHS and I have always agreed on the proper implementation of laws or policy, and there have been times when the only path forward for my clients was litigation. But, for the most part, I have found both the legal department and the policy people at the MDHHS to be open to communication and ways to improve. Over the years, myself and my colleagues have convinced MDHHS to change policy, written policy language, and assisted in drafting crucial notices that went out to our clients, including those sent out when Medicaid work requirements were being considered. We worked with Civilla<sup>4</sup> when the MDHHS took significant steps to reduce obstacles in its application process. Thus, I was surprised at the contentious nature of our meetings with the Agency. Yes, in the end we do have litigation as a tool, but suing the state is time-consuming and slow to bear fruit. It is a last resort. For our eligible clients, we want one thing – for them to get paid, and in a timely fashion. One would think that the Agency has the same goal. But despite meeting with Agency representative for the past five months, no progress has been made. Notices have remained baffling and wrong,

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<sup>3</sup> <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

<sup>4</sup> <https://civilla.org/>

applicants and recipients have no ability to speak with someone at the Agency who can fix their problems, and the MiWAM portal remains inaccessible to the average individual. The Agency's apparent unwillingness to work with us is as confusing as it is confounding.

### **Continued confusion regarding the Agency's actions**

Some individuals at the Agency have told us that there was an audit, sometime late last year, that instructed the state to retroactively requalify every PUA recipient who had chosen one of four PUA certification questions that are no longer valid. Hence, the need to send out 700,000 letters asking people to retroactively requalify. We have asked for this audit but have yet to see it. Other individuals at the Agency told us the action was based on federal guidance contained in UIPL 16-20 Change 5.<sup>5</sup> This reason seems misplaced, as the guidance pertains to three new COVID-related reasons and to updating the PUA claim application *going forward*:

States must notify **every** individual who had previously filed a PUA claim at any time while the PUA program was in effect, and was denied for **any** week because they were not unemployed, partially unemployed, or unable or unavailable to work for one of the COVID- 19 related reasons available at the time. [*emphasis included in original*]

In addition, the guidance instructs States to not paraphrase questions and to permit applicants to choose more than one eligibility reason. Yet there is no indication that these changes apply retroactively to individuals who were approved for PUA. If there is an audit or other instruction from the DOL, it has not been revealed to us, and we have asked. The Agency denies that there was an instruction from the DOL, while at the same time stating that there was an audit behind its actions. If the Agency was instructed by the

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<sup>5</sup> [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20\\_Change\\_5.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_5.pdf)

federal government that it had no choice but to create havoc in the lives of 700,000 households, it could have made things easier by including us in the messaging. As it stands, we do not have clarity about the reason it took this action.<sup>6</sup>

## **Conclusion**

Michigan workers need an unemployment insurance system that works. There are critical problems being faced by the Agency today, ones that have made it increasingly difficult for eligible individuals to access benefits. These challenges did not start with the pandemic. Now is the time to create a system that works for the state, employers, and claimants alike. Collaboration with stakeholders, transparency, and clear messaging are an excellent place to start.

Thank you again for the opportunity to speak to the Committee. Please feel free to contact me with any questions you may have.

Sincerely,

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<sup>6</sup> This afternoon, we were informed that there is a Monitoring Report issued by the DOL behind the letter and that it will be provided to advocates.